she lived while she was obtaining a divorce from her husband. They agreed that they would manage their affairs as a partnership and would share equally in the profits or losses; they accumulated property under this arrangement and sold it; defendant retained most of the proceeds of the sale, but agreed to pay plaintiff her share. In a suit to recover plaintiff's share of the proceeds of the partnership enterprise, the lower court denied relief because the contract of partnership was tainted with immorality. On appeal it was *held*, conceding, but not deciding, that the partnership was illegal, yet defendant, having received the profits of the partnership, is liable to the other for an agreed division thereof. *Mitchell* v. *Fish* (1910), — Ark. —, 134 S. W. 940.

This decision as to the rights of the members of an illegal partnership is contrary to the numerical weight of authority. That one member of an illegal firm will not be compelled to pay over to another his agreed share: *Sykes* v. *Beadon*, 11 Ch. Div. 170; *Tenney* v. *Foote*, 95 Ill. 99; *Hunter* v. *Pfeiffer*, 108 Ind. 197; *Snell* v. *Dwight*, 120 Mass. 9; *Jackson* v. *McLean*, 100 Mo. 130; *Woodworth* v. *Bennett*, 43 N. Y. 273; *Croft* v. *McConough*, 79 Ill. 346; *Coal Co.* v. *Coal Co.*, 68 Pa. St. 173; *Stewart* v. *M'Intosh*, 4 Har. & J. (Md.) 233; *Gould* v. *Kendall*, 15 Neb. 549, etc. Some courts hold that when the business has been wound up there can be a recovery even without a promise to pay. *Brooks* v. *Martin*, 2 Wall. 70 (but see *McMullen* v. *Hoffman*, 174 U. S. 639); *Willson* v. *Owen*, 30 Mich. 474. Some other courts in accordance with the decision of the principal case allow a recovery if there has been an express promise to pay. *Belcher* v. *Conner*, 1 S. C. 88; *King* v. *Winants*, 71 N. C. 469; *De Leon* v. *Trevino*, 49 Tex. 88; *Watson* v. *Fletcher*, 7 Grat. 1; *Crescent Ins. Co.* v. *Bear*, 23 Fla. 50. But as said before the numerical weight of authority is against the principal case, and it would seem that the reasoning of the courts denying a right of recovery is better than that of the principal case. The holding in this case amounts to the enforcement of an illegal contract, for the agreement to pay over the proceeds is a part of the partnership contract and the whole partnership contract is illegal.

PRINCIPAL AND AGENT—ESTOPPEL TO DENY AUTHORITY OF AGENT.—A due bill was given for money advanced Chelsea Club $60, and signed by one M as agent for the club. It appeared that the money was advanced for the benefit of the club, and was so expended, though there was no proof that M was authorized to borrow money for the club. *Held*, two justices dissenting, that the principal is estopped from denying the authority of the agent to give the due bill. *Wall* v. *Chelsea Plantation Club* (1911), — S. C. —, 70 S. E. 434.

There is no doubt that M did not have authority to borrow this money. Power to borrow must be express or strictly necessary, and is never implied from general powers. 31 CYC. 1395. Nor is it denied by any of the justices that, had it been shown that the money had been used for the defendant, there could be a recovery in quasi contract for the actual benefit derived. But to hold that the defendant is estopped to deny the authority to execute the due bill, is a different matter, for this amounts to holding that a man is liable on a contract he never authorized or ratified. There is no ratification here

as there was no evidence introduced tending to show that the defendant had full knowledge of the facts. *Owings* v. *Hull*, 9 Pet. 607; *Lewis* v. *Read*, 13 Mee. & W. 834; *Bennecke* v. *Ins. Co.*, 105 U. S. 355; *Seymour* v. *Wyckoff*, 10 N. Y. 213. It is generally understood that to constitute an estoppel there must be, along with the other elements, some act on the part of the party estopped amounting to a misrepresentation which has been acted upon by the other to his damage. *Pickard* v. *Sears*, 6 Ad. & El. 469; *Andrews* v. *Aetna L. Ins. Co.*, 85 N. Y. 334; 2 POMEROY EQ. JUR. Ed. 3, § 804. In this case the only thing that in any manner approximates an act amounting to a misrepresentation was the enjoyment of the benefits, and even this was not proved. But even if this were an act amounting to a misrepresentation, it occurred *after* the loan by the plaintiff, and hence there could be no estoppel, as there was no reliance on the acts of the party to be estopped. It would seem therefore that if a recovery is to be allowed at all, it should be on the quasi contract and not on the ground of estoppel or ratification.

PRINCIPAL AND AGENT—FRAUD BY AGENT IN PURCHASING FOR PRINCIPAL.—Plaintiff employed defendant as his agent to purchase certain personal property. The agent had previously obtained a personal option to buy the property for $825, which he exercised and then delivered the property to his principal, receiving therefor $2750, which he stated to his principal was the price paid by him for the property. *Held*, that the principal could retain the property, and recover the difference between what the agent charged him and what the agent paid for the property under the option. *Watson* v. *Bayliss* (1911), — Wash. —, 113 Pac. 770.

It is fundamental that a purchasing agent must not purchase from himself. *Bischoffsheim* v. *Baltzer*, 20 Fed. 890; *Maryel* v. *Strouse*, 5 Fed. 483. And there is no question that one holding an option is such an owner as to come within the rule. *Montgomery* v. *Hundley*, 205 Mo. 138. But admitting that the agent is guilty of a breach of duty, the question of the principal's remedy is difficult of solution. There is no doubt that he may return the property and recover the amount paid. *Gillett* v. *Peppercorne*, 3 Beav. 78; *Conkey* v. *Bond*, 36 N. Y. 427; *Disbrow* v. *Secor*, 58 Conn. 35. But if the principal chooses to keep the property, what are his rights? Where the agent owns the property absolutely, it has been decided that the principal can recover only the excess over the *actual value* of the property. *Kevane* v. *Miller*, 4 Cal. App. 598; *Oliver* v. *Lansing*, 48 Neb. 338; *Massey* v. *Davies*, 2 Ves. Jr. 317. And if, where the agent owns the fee the principal, retaining the property, must pay a fair price for it, regardless of what the agent paid, the same result should be reached, on principle, in cases where the agent has a previously acquired option, for an option is as much property, as far as it goes, as is the fee, and the agent should not be deprived of his property without compensation. There are several cases, which contrary to the principal one, deny that the principal, retaining the property, can compel the agent to account for the amount in excess of what he paid under his previously acquired option. *Whitehead* v. *Lynn*, 20 Colo. App. 51; *Sunderland* v. *Kilbourn*, 3 Mackey, 506, Affd. 130 U. S. 505; *Ely* v. *Hanford* 65 Ill. 267. See